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Attorney for Plaintiffs
Vladimir Balarezo, Abelardo Guerrero,
Victor Funez & Osmin Avila

UNITED STATES DISTRICT COURT
FOR DISTRICT OF NORTHERN CALIFORNIA

VLADIMIR A. BALAREZO, ET AL.,
individually and on behalf of others similarly
situated

Plaintiff,

vs.

NTH CONNECT TELECOM INC., AND
STEVEN CHEN,

Defendants

Case No.:C07-05243 JF

**DECLARATION OF OSMIN AVILA IN
SUPPORT OF PLAINTIFFS' MOTION
FOR APPROVAL OF *HOFFMANN-LA
ROCHE* NOTICE**

Date: April 11, 2008

Time: 9:00 AM

Judge: Jeremy Fogel

I, the undersigned, declare as follows:

1. I am over 18 years old. I have personal knowledge of the matters stated herein. If called upon to testify before this Court, I would and could do so to the same effect.

2. I was employed by Defendant Nth Connect Telecom Inc. ("Nth Connect") as an Installation Technician approximately from 2005 to 2007.

3. My duties as an Installation Technician at the Nth Connect were to install cable equipments for Comcast at the customers' houses as dispatched at various specified time periods during the day.

1 4. I was compensated by piece for the work I performed. Specifically, I was
2 compensated a specific rate for each installation I had completed. The piece rate would vary,
3 depending on the nature of the particular job I was dispatched to perform. At the end of each pay
4 period, Nth Connect would give me an earnings statement that summarized all the work I
5 performed during the pay period, and the amount I earned for that pay period. Exhibit 1 hereto is
6 a true and accurate copy of one earning statement issued to me for the period from December 24,
7 2006 to January 6, 2007. As demonstrated by Exhibit 1, the amount I earned bore no relation to
8 the hours I worked during the pay period.

9 5. I was never paid according to an agreed-upon hourly rate.

10 6. My pay was never based on the number of hours I worked.

11 7. For the early part of my employment with Nth Connect, I was treated as an
12 “independent contractor,” and was paid on 1099 not subject to tax withholdings. Sometime in
13 2006, Nth Connect started putting me and other Installation Technicians on payroll. In
14 processing the payroll, Nth Connect would arbitrarily assign me an artificial hourly rate at or
15 near the minimum wage, and reverse engineer the payroll calculation using the number of hours
16 shown on my daily time cards. As result, my payroll statement would show that I was paid an
17 hourly rate near the minimum wage for regular hours worked within 8 hours per day or 40 hours
18 per week, and time and one-half of that falsified hourly rate for hours worked in excess of 8
19 hours per day or 40 hours per week. Such reverse-engineered hourly earnings for a particular
20 pay period would inevitably differ from the amount I actually earned based on the installation
21 work I performed during that pay period. Nth Connect would then list an extra amount as
22 “bonus”, “gas reimbursements”, “expenses” and “tools”, etc. to make up the difference so that
23 the gross amount I received from Nth Connect per pay period as reflected on the payroll
24 statement for that period would always confirm with the amount I earned based on the
25 installation work performed, while in reality, I was not paid any amount in addition to the
earnings from installations based on piece rate. Exhibit 2 hereto is a true and correct copy of

1 payroll statement for the period from December 24, 2006 to January 6, 2007, which was reverse-
2 engineered to make it appear that I was paid by an hourly rate for regular hours and one and one-
3 half of that hourly rate for overtime hours worked.

4 8. Based on my personal knowledge of Nth Connect's operations that I gained
5 during my employment with Nth Connect, I know that none of the Techs received overtime pay
6 premiums. I often spoke with other Techs during my tenure about our terms and conditions of
7 employment. From my own experience, what I learned from my managers, I learned that Nth
8 Connect observed a uniform policy applicable to all Techs of paying only piece rate earnings
9 from the installations performed despite that Techs worked substantial overtime hours every
10 week.

11 I declare under penalties of perjury under the laws of the United States that the foregoing
12 is true and accurate.

13 Dated: March 6, 2008

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15 By: /s/ Osmin Avila
16 Osmin Avila
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Comcast South Bay Broadband Installation

Bi-Weekly Payout

Vehicle #

Mileage In:

Mileage Out:

Total Mileage:

Tech Name: Osmin Avila

12/24	to	1/6
0		

	\$736.25
Deductions	\$0.00
Total	\$736.25

San Jose

San Jose															Total		Total \$1 Week	First week	Second Week	Payroll
Week end 12/30															Week end 1/6					
		12/24	12/25	12/26	12/27	12/28	12/29	12/30	Total	12/31	1/1	1/2	1/3	1/4	1/5	1/6	Total			
Aerial New Connect	NAH	\$23.00							0								0			
UG New Connect	NUH	\$18.00							0								0			
MDU New Connect	NLB	\$18.00							0								0			
Connect Existing A/O	EO1	\$4.50							0								0			
Aerial Same Trip A/O	AO1	\$9.00					2	2							1	1	3			
UG Same Trip A/O	AO1	\$9.00							0	1					4	5	5			
MDU Same Trip A/O	AO1	\$9.00							0								0			
Additional outlet w/wallfish	WF1	\$27.00							0								0			
Separate Trip A/O	ASU/ ASW	\$17.00							0								0			
Service Tier Change	STC	\$7.00							0						1	3	3			
Additional Digital Box/Upgrade	AD1	\$5.00					1	3	4	1							5			
Cable Card Installs	CC1	\$7.50							0								0			
Remove Drop (Video, H S I , Telephony)	RED	\$10.00							0								0			
Aerial/UG/MDU Drop Replacement	RPD	\$10.00		2				2		1							1			
Conduit Push (Video, H S I , Telephony)	CON	\$10.00							0								0			
Video Reconnect	REH	\$18.25							0					1		1	2			
Reconnect MDU	RLB	\$18.25				1		1	2				1				1			
Make Hot Tap	MHT	\$8.00							0								0			
Disco	DXS	\$6.00							0								0			
Disco W/Equipment	DXE	\$11.00							0								0			
Satellite Dish Remove	SAL	\$7.00							0								0			
Self Installation Kit	SK1	\$3.00							0						1	1	1			
Troubleshoot Non-Responding DCT/DVR	TNR	\$20.00							0								0			
Separate DCT Up Grade	SDB	\$12.00				2			2		2			2		1	5			
UG Drop Bury									0								0			
UG Drop Bury - Conduit W/O Construction									0								0			
UG Drop Bury - W/Construction									0								0			
New C.H.S.I Premium	PNC	\$50.00							0								0			
Reconnect C.H.S.I Premium	PRC	\$40.00				1		1	1	3						1	1			
H.S.I Reconnect W/Home Networking	PNC W/HNT-S	\$63.25							0								0			
H.S.I Reconnect W/Home Networking (MDU)	PNC W/HNT-S	\$58.25							0								0			
H.S.I New W/Home Networking	PNC W/HNT-S	\$80.00							0								0			
H.S.I New W/Home Networking (MDU)	PNC W/HNT-S	\$75.00							0								0			
Combo-Premium New Connect	NVH	\$60.00							0								0			
Combo-Premium New Connect (MDU)	NVH	\$55.00							0								0			
Combo-Premium Reconnect	RVH	\$50.00					1	2	3		1					1	2			
Combo-Premium Reconnect (MDU)	RVH	\$50.00							0								0			
Home Networking (1-5 Computers)	HNT1+	\$14.00							0								0			
CDV NEW CONNECT	CNC	\$53.00							0								0			
CDV RECONNECT	CRC	\$40.00		2				2	4		1		3	4			8			
TELEPHONE LINE	TEL	\$9.00							0		1		2				3			
RECONFIGURE PHONE	RPJ	\$4.50					3	3					4				4			
VERIFYING CUSTOMER ALARM	VCA	\$6.75							0								0			
DUAL INSTALL - NEW VIDEO AND CDV (SDU)	NVP	\$62.50							0								0			
DUAL INSTALL - NEW VIDEO AND CDV (MDU)	NVP	\$55.00							0								0			
DUAL INSTALL - NEW HSI AND CDV (SDU)	NHP	\$70.00							0								0			
DUAL INSTALL - NEW HSI AND CDV (MDU)	NHP	\$65.00							0								0			
DUAL INSTALL - RECONNECT VIDEO AND CDV (SDU)	RVP	\$50.00							0								0			
DUAL INSTALL - RECONNECT VIDEO AND CDV (MDU)	RVP	\$50.00							0								0			
DUAL INSTALL - RECONNECT HSI AND CDV (SDU)	RHP	\$55.00		1			1	2				1					1			
DUAL INSTALL - RECONNECT HSI AND CDV (MDU)	RHP	\$55.00							0								0			
TRIPLE INSTALL - NEW VIDEO, HSI AND CDV (SDU)	NTC	\$80.00							0								0			
TRIPLE INSTALL - NEW VIDEO, HSI AND CDV (MDU)	NTC	\$75.00							0								0			
TRIPLE INSTALL - RECONNECT VIDEO, HSI AND CDV (SDU)	RTC	\$65.00		1			1	2									0			
TRIPLE INSTALL - RECONNECT VIDEO, HSI AND CDV (MDU)	RTC	\$65.00						1	1								0			

69	867.00	767.75	1,634.75
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NTH CONNECT TELECOM, INC
1445 KOLL CIRCLE
SUITE 107
SAN JOSE, CA 95112

Earnings Statement



Pay Period: 12/24/2006 to 1/06/2007
Pay Date: 1/16/2007
Check #: 100011240

Employee Number: 0044
Department Number:
Social Security Number: XXX-XX-9978
Marital Status: MARRIED
Number Of Allowances: 05
Rate: 7.5000

OSMIN AVILA
510 BRANHAM LN
61
SAN JOSE, CA 95111

Hours and Earnings				Taxes and Deductions		
Description	Hours	This Period	Year-To-Date	Description	This Period	Year-To-Date
REGULAR	51.00	382.50	765.75	FICA	125.06	311.20
O/TIME			5.25	CA DIS	9.81	24.41
BONUS1		1252.25	3297.00	ADVANCE	500.00	

Gross Pay Year To Date	Gross Pay This Period	Total Deductions This Period	Net Pay This Period
\$4,068.00	\$1,634.75	\$634.87	\$999.88